

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,
Plaintiff-Respondent,

v.

CURTIS HORTON,
Defendant-Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR GRAYS HARBOR COUNTY

The Honorable David L. Edwards, Judge

APPELLANT'S REPLY BRIEF

Suzanne Lee Elliott
Attorney for Appellant
1300 Hoge Building
705 Second Avenue
Seattle, WA 98104
(206) 623-0291

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I.
REPLY ARGUMENTS

A. COUNSEL WITHDRAWS THE REFERENCE TO *STATE V. JONES*

The State is correct. Counsel inadvertently cited to an unpublished case – *State v. Jones*, 101 Wn. App. 1036 (2000). Counsel hereby withdraws all reference to that case.

B. AS AN OVERNIGHT GUEST ON PRIVATE PROPERTY, HORTON HAD A PRIVACY INTEREST RECOGNIZED BY THE FOURTH AMENDMENT AND CONST., ART. 1 § 7

An overnight guest has standing to challenge a warrantless search. *State v. Link*, 136 Wn. App. 685, 692, 150 P.3d 610, 614, *review denied*, 160 Wn.2d 1025, 163 P.3d 794 (2007); *Minnesota v. Olson*, 495 U.S. 91, 96-97, 110 S.Ct. 1684, 109 L.Ed.2d 85 (1990). Here, the State has apparently abandoned the trial court’s ruling that because Horton was not the “owner” of the property, he had no privacy interest.

The State now seems to argue that overnight guests have a privacy interest only when they are in a “residence.” Brief of Respondent at 14. That is incorrect. “[T]he Fourth Amendment protects people, not places,” and provides sanctuary for citizens wherever they have a legitimate expectation of privacy.” *Olson*, 495 U.S. at 96, n. 5. See also *State v. Pruss*, 145 Idaho 623, 628, 181 P.3d 1231, 1236 (2008).

C. THE POLICE CONDUCTED AN ILLEGAL SEARCH OF THE PRIVATE PROPERTY WHEN THEY ENTERED AFTER DARK WITHOUT PERMISSION, QUESTIONED PEOPLE PRESENT, PROCEEDED WELL INTO THE PROPERTY 25 YARDS FROM THE NEAREST ROAD, 88 FEET BACK FROM THE NEAREST BUILDING ON THE PROPERTY, BEHIND A SIX-FOOT FENCE, FINALLY LOCATING HORTON'S JEEP UNDER SOME BUSHES

It is undisputed that Ranger Stabb was aware that he was on private property. Defense Motion at 2. It is also undisputed that he had to travel a considerable distance into the property to find people camping. This area was near a permanent structure. Defense Brief at 3. The Jeep was located 80 yards off the roadway, 25 yards from the nearest road and 88 feet from a permanent building.

Under Art. 1 § 7, exceptions to the warrant requirement are narrowly drawn and the State "bears a heavy burden" in showing that the search falls within one of the exceptions. *State v. Jones*, 146 Wn.2d 328, 335, 45 P.3d 1062 (2002). The State must establish an exception by "clear and convincing evidence." *State v. Garvin*, 166 Wn.2d 242, 250, 207 P.3d 1266 (2009).

These protections apply not only to the interior of a home, but to the surrounding areas or "curtilage." "The curtilage of a home is 'so intimately tied to the home itself that it should be placed under the home's 'umbrella' of Fourth Amendment protection.'" *State v. Ross*, 141 Wn.2d 304, 312, 4 P.3d 130 (2000) (quoting *State v. Ridgway*, 57 Wn. App. 915, 918, 790 P.2d 1263 (1990) (quoting *United States v. Dunn*, 480 U.S. 294, 301, 107 S.Ct. 1134, 94

L.Ed.2d 326, *reh'g denied*, 481 U.S. 1024, 107 S.Ct. 1913, 95 L.Ed.2d 519 (1987)). For example, if a portion of the driveway is hidden from public view and does not lead directly to the house, it may fall outside the impliedly open areas of the curtilage. See *State v. Daugherty*, 94 Wn.2d 263, 268-69, 616 P.2d 649 (1980), *cert. denied*, 450 U.S. 958, 101 S.Ct. 1417, 67 L.Ed.2d 382 (1981) (resident had reasonable expectation of privacy in particular area of driveway depriving officer of lawful right to view interior of garage from threshold). See also *State v. Thorson*, 98 Wn. App. 528, 990 P.2d 446 (1999) (rural property reached by footpath only after trespassing on two neighboring properties), *review denied*, 140 Wn.2d 1027, 10 P.3d 407 (2000); *State v. Johnson*, 75 Wn. App. 692, 879 P.2d 984 (1994) (furtive use of access road at night after circumventing closed gate with no intention of visiting house), *review denied*, 126 Wn.2d 1004, 891 P.2d 38 (1995); *Ridgway*, *supra* (isolated house hidden from road with closed gate and guard dogs).

Courts have found locations considerably farther from a structure to be part of the curtilage. See, e.g., *State v. Hoke*, 72 Wn. App. 869, 874, 866 P.2d 670, 673 (1994) (side yard of house within curtilage); *Norman v. Georgia*, 134 Ga. App. 767, 768, 216 S.E.2d 644 (1975) (defendant's truck was within curtilage when parked in the middle of a small meadow behind a barn, which was itself 100 feet from house); *Gonzalez v. Texas*, 588 S.W.2d 355, 360 (Tex. Crim. App. 1979) (backyard of home entitled to same protection as home itself).

The question is not whether this was a place where a resident or invited guest would drive. And the defendant's privacy right does not depend upon whether or not the vehicle was under a tarp or in a garage. Here, the vehicle was parked in the bushes, which evidenced Horton's desire that it remain unseen. The fact that there were other invited guests on the property is irrelevant. Art. 1 § 7 and the Fourth Amendment are designed to protect individuals from the prying eyes of law enforcement acting without a warrant. Taking the State's argument to its logical extension, a person would have no privacy interest in *any* area – including his home – if others were present and awake.

Horton is not arguing that “whatever land he parks on” becomes a private area. Rather, he is pointing out that in this case, he parked on private property at the invitation of the owner and the police engaged in a warrantless search in an area where Horton had a privacy interest.

The State appears to argue that the search can be upheld under the “plain view” exception to the warrant requirement. But a warrantless search may be upheld under the “plain view” doctrine only where the officer had a prior justification for an intrusion and the search was inadvertent. *Coolidge v. New Hampshire*, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564, *reh'g denied*, 404 U.S. 874, 92 S.Ct. 26, 30 L.Ed.2d 120 (1971). Here, there was nothing inadvertent about the discovery of the Jeep. The officers were clearly searching for it when they entered the property.

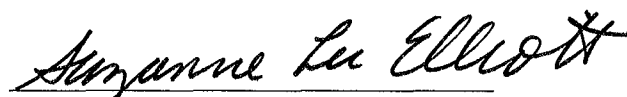
The State also appears to argue that the search can be justified under the “open view” doctrine. Although the Fourth Amendment does not protect “open fields” from unreasonable searches and seizures, *Oliver v. United States*, 466 U.S. 170, 179, 104 S.Ct. 1735, 80 L.Ed.2d 214 (1984), Art. 1 § 7 of our state constitution allows individuals to protect their private affairs in open fields if they have manifested their desire to exclude others from their “open fields.” *Johnson*, 75 Wn. App. at 707. Here, Horton manifested his desire to exclude the police by parking the Jeep out of view under some bushes.

II. CONCLUSION

For the reasons stated above and in Horton’s opening brief, this Court should reverse the trial court’s order denying Horton’s motion to suppress.

DATED this 2nd day of May, 2016.

Respectfully submitted,


Suzanne Lee Elliott, WSBA #12634
Attorney for Curtis Horton

CERTIFICATE OF SERVICE

I hereby certify that on the date listed below, I served by First Class
United States Mail, postage prepaid, one copy of this brief on the following:

Mr. Jason F. Walker
Grays Harbor County Prosecutor's Office
Grays Harbor County Courthouse
102 West Broadway, Room 102
Montesano, WA 98563

Mr. Curtis Horton
19502 – 60th Street East
Bonney Lake, WA 98391

05/02/2016
Date

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Peyush Soni

SUZANNE LEE ELLIOTT LAW OFFICE

May 02, 2016 - 2:14 PM

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